UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 30th day of July, 2002

Joint Application of **AMERICAN AIRLINES, INC.** **and** **FINNAIR OYJ** **under 49 U.S.C. §§ 41308 and 41309 for approval of and antitrust immunity for Alliance Agreement**	**Served: July 30, 2002** **Docket OST-2002-12063**

ORDER GRANTING APPROVAL AND ANTITRUST IMMUNITY FOR AN ALLIANCE AGREEMENT

By this order, we grant approval of and antitrust immunity for an Alliance Agreement[1] (the "Alliance Agreement") between American Airlines, Inc. ("American") and Finnair Oyj ("Finnair"), and their respective affiliates[2] (collectively, the "Joint Applicants"), under 49 U.S.C. §§ 41308 and 41309, subject to the conditions described below.

On June 9, 1995, the Governments of the United States and Finland reached an open-skies aviation agreement that promised substantial benefits to consumers and communities in both countries. The predicate for our approval and grant of antitrust immunity for the Alliance Agreement is the open-skies agreement. The accord allows U.S. airlines to serve any point in Finland (and open intermediate and beyond rights) from any point in the United States and allows airlines of Finland to do the same. Our evaluation shows that open-skies initiatives encourage more competitive service, since market forces, not restrictive government regulation, discipline the price and quality of airline service.

I. The Alliance Agreement

The essential elements of the Joint Applicants' arrangement include coordination of schedules and connecting service; the establishment of individual and joint marketing, promotion, and advertising networks; harmonization of respective service standards and joint product development; code sharing; cooperative pricing, inventory control; revenue sharing;

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1 For purposes of this application, the term "Alliance Agreement" shall include the arrangements identified in this application as Exhibit JA-1; any implementing agreements in furtherance of the foregoing agreements; and any transaction undertaken pursuant to the foregoing agreements.

2 TWA Airlines LLC ("TWA") and American Eagle Airlines, Inc. and Executive Airlines, Inc. d/b/a American Eagle (collectively, "American Eagle"). *See* Joint Application at 1.

establishment of joint strategies for selling alliance services and coordinating and allocating sales resources; joint procurement; coordinated cargo programs; coordinated travel intermediary commission structures and incentive arrangements; frequent flyer programs; and the sharing of facilities and services at commonly served airports. [3] In summary, while the partners state that each airline will retain its separate identity, brand, ownership, and control, [4] the underlying objective of the arrangement will enable the companies to plan and coordinate services over their respective route networks as if there had been an operational merger among them.

II. The Joint Application

On April 4, 2002, the Joint Applicants filed for approval of and antitrust immunity for (1) a cooperative agreement (Exhibit JA-1), and (2) all agreements among the applicants that implement any part of the cooperative agreement or are entered into by the applicants under the cooperative agreement (hereafter the "Alliance Agreement").[5] They state that the proposed agreement will bring enhanced competition and efficiency to the U.S.-Europe market. They state that their request is fully consistent with the U.S.-Finland open-skies agreement and with U.S. international aviation policy. Subsequently, Finnair submitted additional documents and a motion for confidential treatment on May 23, 2002. [6]

They maintain that the proposed alliance will enable them to develop mechanisms to enhance efficiencies, reduce costs and provide better service to the traveling and shipping public. They state that the proposed integration of operations, planning, and marketing will better enable them to develop substantial new online service, including greater customer choice and ease of connections. The Joint Applicants also maintain that they anticipate that a range of cost synergies and efficiencies can be achieved through closer coordination of their sales and airport operations, joint promotions and marketing, joint purchasing, and cooperative yield management. They also state that the expanded alliance will allow them to compete more effectively with the other immunized transatlantic alliances.

They state that the Alliance Agreement will allow them to achieve additional operating efficiencies that will translate directly into greater value for the traveling and shipping public, and generate broad economic benefits for communities across the worldwide networks of the two carriers. They maintain that the various benefits obtainable through the proposed alliance cannot be achieved to the same degree absent antitrust immunity.

They contend that approval of their application will promote U.S. international aviation policy objectives by further encouraging the development of integrated global alliances. The Joint Applicants further assert that the Department, in its October 2000 report *Transatlantic*

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3 Application at 3.

4 Application at 5.

5 We note that American has one other immunized alliance, with LAN Chile, effective September 13, 1999 (Docket OST-1997-3285).

6 Included documents associated with potential U.S. gateways, code-share passengers, and U.S.-Finland market share. Answers to the motion were due on June 4, 2002. The motion is unopposed.

Deregulation: The Alliance Network Effect, found alliance-based networks to be the principal driving force behind transatlantic price reductions and traffic gains. Thus, they maintain that the alliance will not substantially reduce or eliminate competition in any relevant market, making it a particularly suitable candidate for antitrust immunity. The joint applicants assert that, because the Department has acknowledged that code-sharing for behind and beyond service is superior to standard interline service, [7] antitrust immunity is an essential tool in facilitating inter-airline arrangements that increase airlines' efficiency and competitiveness in the developing global marketplace.

In the global market, the Joint Applicants argue that providing antitrust immunity to the Alliance Agreement, enabling Finnair to engage in joint operations with American, will enhance competition in the global air transport services market. They maintain that an immunized alliance will allow the partners jointly to provide fully coordinated connections, marketing and services that will stimulate competition with other competing airlines and alliances beyond what could be achieved through simple interlining or code sharing.[8]

In the U.S.-Europe market, the Joint Applicants maintain that the proposed alliance will not substantially reduce competition. They maintain that virtually all competitors in the transatlantic market are participating in alliances. They note that there is no competitive U.S.-Europe nonstop overlap between American and Finnair.[9] They also argue that most transatlantic city pairs in which on-line service is available are served by numerous airlines and alliances with nonstop, one-stop, or on-line connecting service.

The Joint Applications allege that another market, which they term the U.S.-Nordic market, should also be considered[10]. They define the "Nordic" market as service to or from Denmark, Finland, Norway, and Sweden. Here, they maintain that the proposed alliance will have no adverse competitive affects. They note that American does not operate nonstop service to any Nordic country.[11] Other than Finnair, the U.S.-Nordic nonstop market is served exclusively by SAS.

The Joint Applicants assert that the proposed alliance constitutes primarily an end-to-end combination, with little network overlap. The Joint Applicants argue that the U.S.-Finland open-skies regime, which permits open entry for U.S. and Finnish airlines and ease of expansion through code sharing or other cooperative arrangements over a variety of intermediate points, ensures that competition in this market is and will remain vigorous.

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7 The Joint Applicants cite Order 96-5-12 (Docket OST-1996-1116) and Order 2000-4-22 (Docket OST-1999-6528) in support of their claim.

8 The record indicates that the proposed alliance will affect about 13,734 behind- and beyond-gateway city pairs where the alliance will create a new on-line alternative. *See* Exhibit JA-7A.

9 *See* Exhibit JA-10.

10 The Department does not recognize a U.S.-Nordic market.

11 *See* Exhibits JA-10 and JA-16.

In the city-pair markets, the Joint Applicants maintain that there will not be a reduction in competition in air services. They state that there are no city-pair markets where Finnair and American compete on a nonstop basis, so there will be no reductions of nonstop competition on any city-pair route. They argue that the U.S.-Finland open-skies regime will assure competitive discipline by providing for open entry and pricing and service freedom.

Finally, the Joint Applicants maintain that this arrangement will allow them to operate their route networks more efficiently, establish a more integrated air transport system through improved network coordination, achieve economies of scope and scale, and enhance competition with other alliances. They state that these expected benefits will result in lower costs, enabling the partners to offer consumers a broader network of integrated services at a lower price. They assert that an immunized alliance will allow them to increase efficiencies, reduce costs, and provide better service to consumers through expanded on-line networks, improved service in behind- and beyond-gateway city pairs, coordinated networks, wider availability of discount fares, inventory control, and reduced sales and marketing costs.

No answers have been filed.

III. Decision Summary

American and Finnair have applied for approval of and antitrust immunity for an Alliance Agreement under 49 U.S.C. §§ 41308 and 41309, whereby they will plan and coordinate service over their respective route networks as if there had been an operational merger between the partners. We find that the arrangement should be approved and granted antitrust immunity, to the extent provided below. Our examination of this proposal leads us to find that the proposed alliance will enhance competition overall and allow the airlines to provide better service and enable them to operate more efficiently. We also find that it is unlikely that the arrangement – subject to the conditions included here – will substantially reduce competition in any relevant market. Finally, our actions here will allow the Joint Applicants to maximize fully the various pro-competitive and pro-consumer benefits associated with integrated alliances that we foresaw resulting from the fundamental liberalization of air services under the U.S-Finland open-skies accord.

We will require the Joint Applicants (1) to withdraw from all International Air Transport Association (IATA) tariff conference activities relating to through prices between the United States and Finland, as well as between the United States and the homelands of foreign airlines participating with U.S. airlines in other immunized alliances; (2) to file all subsidiary and/or subsequent agreements with the Department for prior approval; and (3) to resubmit for review the pertinent Alliance Agreement within five years from the date of issuance of this order. We also find it in the public interest to direct Finnair to report full-itinerary O&D survey data for all passengers to and from the United States (similar to the O&D Survey data reported by U.S. airlines and its partner American).

Finally, we have determined that it is appropriate and consistent with the public interest to issue a final decision in this case now. Interested parties have had full opportunity to comment on these

matters. No answers were filed. We also have determined that the proposed alliance presents no significant competitive issues requiring further consideration. We therefore will dispense with the issuance of an Order to Show Cause and issue a final order approving this unopposed application.

IV. Decisional Standards under 49 U.S.C. Sections 41308 and 41309

The Joint Applicants applied for approval of and antitrust immunity for an Alliance Agreement under 49 U.S.C. §§ 41308 and 41309, whereby they will plan and coordinate service over their respective route networks as if there had been an operational merger between the partners.

Under 49 U.S.C. §41308, the Department has the discretion to exempt a person affected by an agreement under §41309 from the operations of the antitrust laws "to the extent necessary to allow the person to proceed with the transaction," provided that the Department determines that the exemption is required by the public interest. It is not our policy to confer antitrust immunity simply on the grounds that an agreement does not violate the antitrust laws. We are willing to make exceptions, however, and thus grant immunity, if the parties to such an agreement would not otherwise go forward without it, and we find that the public interest requires that we grant antitrust immunity.

Under 49 U.S.C. §41309, the Department must determine, among other things, that an inter-carrier agreement is not adverse to the public interest and is not in violation of the statute before granting approval.[12] The Department may not approve an inter-carrier agreement that substantially reduces or eliminates competition unless the agreement is necessary to meet a serious transportation need or to achieve important public benefits that cannot be met, and those benefits cannot be achieved by reasonably available alternatives that are materially less anticompetitive.[13] The public benefits include international comity and foreign policy considerations.[14]

The party opposing the agreement or request has the burden of proving that it substantially reduces or eliminates competition and that less anticompetitive alternatives are available.[15] If the record shows that the agreement will substantially reduce, or eliminate, competition, the party defending the agreement or request has the burden of proving the transportation need or public benefits.[16]

V. Approval of the Agreement

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12 Section 41309(b).

13 Section 41309(b)(1)(A) and (B).

14 Section 41309(b)(1)(A).

15 Section 41309(c)(2).

16 *Id.*

The United States and Finland finalized an open-skies agreement in June 1995. In doing so, the two countries formally recognized that restrictive bilateral aviation relationships adversely affect important cultural and economic ties, and restrict the growth of trade between countries. The U.S.-Finland market is now governed by an open skies agreement that has eliminated barriers to new entry, expansion and competition that were earlier created by restrictive government regulation. Such an agreement maximizes competitive opportunities, including the flexibility for all U.S. and affected foreign airlines to operate their own direct services, or joint services with another airline. By so doing, an open skies agreement also recognizes the value of airline networks and provides the opportunity for airlines to offer the services covered by the liberalized regime, either individually or as partners in an alliance.

The Department has found substantial consumer and competitive benefits ensuing from open-skies agreements and from the structural changes that have occurred in the global airline system, such as alliances.[17] Such alliances allow the partners to achieve greater operational efficiencies and to expand their route networks on an integrated and coordinated basis.

As explained below, American does not now operate nonstop service in the U.S.-Finland market, and Finnair and American do not compete on any other nonstop transatlantic route. Finnair provides daily nonstop service between the United States and Helsinki, Finland, from one U.S. gateway:New York (JFK Airport). As a result, there would be no reduction in nonstop competition resulting from the immunized alliance between Finnair and American. It is against this background that we have decided to approve and grant antitrust immunity to the American-Finnair Alliance Agreement, subject to the conditions noted.

Public Benefit Summary

We find that the proposed alliance would provide important public benefits. The proposed arrangement should benefit consumers by offering the traveling public new integrated services and additional competition for existing alliances and single carrier services. We have previously determined that the pro-competitive effects of global alliances are particularly evident in behind- and beyond-markets where integrated alliances with coordinated connections, marketing, and services can offer competition well beyond mere interlining and a multitude of new on-line services.[18] In this case, we note that American's worldwide network provides consumers with service to 229 cities in 47 countries and that Finnair serves 74 cities in 32 countries. The record also indicates that American and Finnair currently serve 11 common airports, only one of which is in the U.S.[19] Thus, the proposed arrangement will benefit consumers by increasing international service options and enhancing competition between airlines, particularly for traffic

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17 *See International Aviation Developments: Global Deregulation Takes Off* (First Report), U.S. Department of Transportation, Office of the Secretary, December 1999; and *International Aviation Developments: Transatlantic Deregulation, The Alliance Network Effect* (Second Report), U.S. Department of Transportation, Office of the Secretary, October 2000.

18 *See* Order 96-5-12 (Docket OST-1996-1116) at 17-18.

19 *See* Exhibit JA-7 at 2.

to or from cities behind and beyond major gateways. Our recent evaluations of international alliances show that they stimulate traffic in these connecting markets and thereby increase competition and service options in the overall international market and increase overall opportunities for the traveling public and the aviation industry.[20] The proposed alliance would also allow the partners to improve the efficiency of their operations and to otherwise work together to improve service not only in the U.S-Finland market but also in the U.S.-Europe market.

Competitive Summary

We also find it unlikely that the Alliance Agreement as conditioned would substantially reduce or eliminate competition in any relevant market. The Joint Applicants do not compete head-to-head in any city-pair market, and several other U.S. and foreign airlines provide competitive service in the relevant transatlantic markets.

We find that the arrangement will benefit overall competition in the affected markets. The alliance will enable the partners to operate more efficiently and to provide the public with enhanced service options. The integration of the partners' services will provide pro-competitive advantages that outweigh any possible negative effects on competition in the relevant markets.

A. Antitrust Issues

The Joint Applicants state that the Alliance Agreement will allow them to develop mechanisms to improve efficiency, expand various benefits available to the traveling and shipping public, and enhance their ability to compete in the global marketplace. They state that, while retaining the separate corporate and national identities, they fully intend to cooperate to the extent necessary to create a seamless air transport system. Accordingly, the proposed arrangement's intended commercial and business effects are equivalent to those resulting from a merger. In determining whether the proposed transaction would violate the antitrust laws, we apply the Clayton Act test used in examining whether mergers will substantially reduce competition in any relevant market.[21]

The Clayton Act test requires the Department to consider whether the Alliance Agreement will substantially reduce competition by eliminating actual or potential competition between American and Finnair so that they would be able to effect supra-competitive pricing or reduce service below competitive levels.[22] To determine whether a transaction is likely to violate the Clayton Act, the Department considers whether the transaction is likely to create or enhance market power, market power being defined as the ability profitably to maintain prices above competitive levels or to reduce product and service quality below competitive levels for a significant period of time. To determine whether a proposed transaction is likely to create or enhance market power, we primarily consider whether the transaction would significantly

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20 *See* note 18, above.

21 Order 92-11-27, at 13.

22 *Id.*

increase concentration in the relevant markets, whether the transaction raises concern about potential competitive effects in light of concentration in the market and other factors, and whether entry into the market would be timely, likely, and sufficient either to deter or to counteract a proposed transaction's potential for harm.

The relevant markets requiring a competitive analysis are: first, the U.S.-Europe market; second, the U.S.-Finland market; and third, the individual city-pair markets.

1. The U.S.-Europe Market[23]

We find that the Alliance Agreement should not diminish competition in the U.S.-Europe market[24]. During the 12 months ended September 2001, American's nonstop passenger market share was about 8.00%, while Finnair's share is less than half of one percent. The proposed American-Finnair partnership would have had a passenger market share of about 8.40%. The nonstop passenger market share for the oneworld alliance (British Airways-American Airlines-Aer Lingus-Iberia-Trans World-Finnair) was 24.74%. In contrast, Star Alliance partners' (United Air Lines-Lufthansa-SAS-Icelandair-Austrian Airlines-Air New Zealand-Lauda Air-bmi) nonstop passenger market share was 21.64%; Sky Team partners' (Delta Air Lines-Air France-Alitalia-Czech Airlines) had a 17.92% nonstop market share; and Northwest Airlines-KLM had an 8.87% nonstop market share. Although the oneworld alliance has the largest share, it does not dominate the market.

As we have previously determined, the U.S.-Europe market is thus highly competitive in terms of service.[25] American Airlines[26], Continental Air Lines, Delta Air Lines, Northwest Airlines, United Air Lines, and U.S. Airways provide scheduled passenger service in this market from their hubs, either individually or in conjunction with an existing alliance. The market is also served by more than 40 foreign airlines, principally from hubs in their homelands.

2. The U.S.-Finland Market

We find that the Alliance Agreement should not substantially reduce competition in the U.S.-Finland market. American does not operate any flights to Finland. Other alliances between a U.S. airline and one or more foreign airlines offer competitive connecting services between the United States and Finland. For these reasons, we find that the proposed transaction would not result in any substantial loss of competition in the U.S.-Finland market.

As noted, American and Finnair conduct joint code-share operations in the U.S.-Finland aviation market. However, the code-share agreement does not provide for guaranteed block-space

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23 Source: T-100 and T-100(f) nonstop segment and market data, for the 12 months ended June 2001.

24 The term "Europe" is identified here as those countries listed in the U.S. Department of Transportation, Bureau of Transportation Statistics Office of Airline Information, *World Area Codes*.

25 For example, *See* Orders 2000-4-22 at 11 and 2000-10-13 at 10.

26 Including service provided by Trans World Airways, Llc.

reservations. Accordingly, neither American nor Finnair purchases or guarantees the seats allocated to it by the other. Seats are allocated only for purposes of inventory management. The operating airline maintains control over inventory on the code-share flights.[27] In these circumstances, as we have found in recent similar cases, the partners do not now price compete in this market.[28]

As we noted above, this market is governed by an open-skies agreement that eliminates all bilateral agreement barriers to entry and provides the opportunity for other airlines to freely enter and meet the needs of consumers in this market. We see no reason why U.S. airlines could not begin new service to Finland if the Joint Applicants charge supra-competitive fares or lower service below competitive levels.

3. The City-Pair Markets

We have reached the same conclusion with respect to the city-pair markets at issue in this proceeding. The record shows that the two airlines do not compete on a nonstop basis in any city-pair market. Since American does not operate flights to Finland, it does not offer connecting service in Finnair's U.S.-Finland markets. In addition, other alliances between U.S. and foreign airlines offer connecting services in the transatlantic markets served by American or Finnair. We find that the American/Finnair alliance therefore will not eliminate or substantially reduce competition in any city-pair market.

B. Public Interest Issues

Under §41309, we must determine whether the Alliance Agreement would be adverse to the public interest. Section 41308 requires a similar public interest examination. Except as noted, we find that approval of the Alliance Agreement will be in the public interest.

For the reasons explained above, we have found that approving the Alliance Agreement will benefit the traveling public, taking into account the conditions imposed by the Department, because they will enable American and Finnair to offer new services and to operate more efficiently. The proposed arrangement is unlikely to reduce competition substantially in any relevant markets, and is otherwise in the public interest.

VI. Grant of Antitrust Immunity

We have the discretion to grant antitrust immunity to the Alliance Agreement approved by us under §41309 if we find that immunity is required by the public interest. It is not our policy to confer antitrust immunity simply on the grounds that an agreement does not violate the antitrust

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[27] *See* Codeshare Agreement, restated as of November 1, 1999, between American and Finnair, identified as AA-AY 000124.

[28] *See* Order 2001-1-19 at 10, Docket OST-2000-7828 (The United-Austrian-Lauda-Lufthansa-SAS request for antitrust immunity).

laws. However, we are willing to grant immunity if the parties to such an agreement would not otherwise go forward, and if we find that the public interest requires the grant of antitrust immunity.

The record shows that American and Finnair are unlikely to proceed with the Alliance Agreement without antitrust immunity.[29] The Joint Applicants claim that they cannot accomplish the public benefits that they seek to achieve through the formation of this alliance absent antitrust immunity. They indicate that they plan to coordinate their operations, including pricing, scheduling, route planning, marketing, sales, and inventory control. They state that their proposed integration of services will surely expose them to antitrust risk.

Since the antitrust laws let competitors engage in joint ventures that are pro-competitive, we think it unlikely that the integration of the Joint Applicants' services would be found to violate the antitrust laws, subject to the conditions being imposed here by us. Nevertheless, the record suggests that the Joint Applicants could be subject to extensive and burdensome antitrust litigation if we did not grant their request. The record also persuades us that they will not proceed without it.

While concluding that we should approve and give immunity to the alliance, [30] we find, as discussed next, that certain conditions are necessary to allow us to find that our actions in these matters are in the public interest.

VII. IATA Tariff Coordination Issue

As we have found in earlier decisions, it is contrary to the public interest to permit immunized alliances to participate in certain price-related coordination that is now immunized within IATA tariff coordination. We therefore have decided to condition our approval and grant of antitrust immunity to the Alliance Agreement by requiring the Joint Applicants to withdraw from participation in any IATA tariff conference activities that affect or discuss any proposed through fares, rates or charges applicable between the United States and Finland, or between the United States and any other countries designating an airline that has been or is subsequently granted antitrust immunity by the Department for participation in similar alliances.[31]

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[29] Application at 15. Also, *See* Recital 3 and Article III, Section 3.2 of the Alliance Agreement (Exhibit JA-1).

[30] The immunity that we propose to grant here would apply solely with respect to transactions between the Joint Applicants and their wholly-owned affiliates. The immunity would not extend to code-share operations or other coordinated activities involved in such transactions to the extent applying to airlines other than the Joint Applicants and their wholly-owned affiliates.

[31] This condition currently applies to prices between the United States and the Netherlands; between the United States and Germany (*See* Order 96-5-27 at 17); between the United States and Denmark, Norway, and Sweden (*See* Order 96-11-1 at 23); between the United States and Austria (*See* Order 2001-1-19 at 16); between the United States and Chile (*See* Order 99-9-9 at 21); between the United States and Korea (*See* order 2002-6-18 at 10-11); between the United States and Malaysia (*See* Order 2000-10-12 at 14); between the United States and Iceland (*See* Order 2000-10-13 at 16); between the United States and Panama (*See* Order 2001-2-5 at 14); between the United States and New

Under this condition, the Joint Applicants may not participate in IATA tariff coordination activities affecting fares, rates and charges between the United States and Finland, and between the United States and the homeland(s) of their similarly immunized alliance competitors. Through prices between the U.S. and other countries, as well as all local fares in intermediate and beyond markets, are not covered by the condition.[32]

We find that this condition is in the public interest for a number of reasons. The immunity that is requested in this proceeding includes broad coverage of price coordination activities among the Joint Applicants. With respect to internal Alliance needs, tariff coordination through the IATA conference mechanism is duplicative and unnecessary. At the same time, one of the reasons that we find supports immunity for the proposed activities is the potential for increased price competition between the partners and other carriers, particularly other international alliances. We have found that such potential competition will, on balance, outweigh any potential anticompetitive effects of price coordination within the Alliance itself and encourage the passing on of economic efficiencies realized by the Alliance to consumers in the form of lower prices. We have previously found in similar cases that competition is undermined if the Joint Applicants are permitted to continue tariff coordination within IATA.

VIII. O&D Survey Data Reporting Requirement

We have access to market data where U.S. carriers operate, including markets that they serve jointly with foreign airlines, for example, the Department's Origin-Destination Survey of Airline Passenger Traffic (O&D Survey). We have also collected special O&D Survey code-share reports for certain large alliances and have directed all other U.S. airlines to file reports for their transatlantic code-share operations beginning with the second quarter of 1996.

However, we receive no market information for passengers traveling to or from the U.S. when their entire trip is on foreign airlines, except for T-100 data for nonstop and single-plane markets. Such passengers account for a substantial portion of all O&D traffic between the U.S. and foreign cities, and the absence of such information severely handicaps our ability to evaluate the

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Zealand (*See* Order 2001-4-2 at 3); and between the United States and the Czech Republic, France, and Italy (*See* Order 2002-1-6 at 7). Also, by letter dated May 8, 1996, Northwest and KLM indicated their willingness to limit voluntarily their participation in IATA (*See* Dockets OST-96-1116 and OST-95-618).

[32] In addition to the foreign applicant's homelands, under this condition, the partners could not participate in IATA discussions of the total ("through") price (*See* 14 C.F.R. § 221.4) between a U.S. point of origin or destination and an origin or destination in Austria, , Chile, the Czech Republic, Denmark, France, Germany, Iceland, Italy, Korea, Malaysia, the Netherlands, New Zealand, Norway, Panama, and Sweden, or a homeland of a subsequently immunized alliance, whether such prices are offered for direct, on-line or interline service. They could, however, discuss local segment prices, arbitraries or generic fare construction rules that have independent applicability outside such markets. IATA activities covered by our condition would include all those discussing prices proposed for agreement, including both meetings and exchanges of documents such as those preceding meetings and those used in mail votes.

economic and competitive consequences of the decisions we must make on international air service.

We must also ensure that our grant of antitrust immunity does not lead to anticompetitive consequences. As in previous cases,[33] we have decided to require Finnair to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic for all passenger itineraries that contain a United States point (similar to the O&D Survey data already reported by American).[34]

To prevent this reporting requirement from having any anticompetitive consequences, we have decided to grant confidentiality to the Finnair Origin-Destination reports and special report on code-share passengers. Currently, we grant confidential treatment to all international Origin-Destination data. We provide these data confidential treatment because of the potentially damaging competitive impact on U.S. airlines and the potential adverse effect upon the public interest that would result from unilateral disclosure of these data (data covering the operations of foreign airlines that are similar to the information collected in the Passenger O&D Survey are generally not available to the Department, to U.S. airlines, or to other U.S. interests).

Our regulation, 14 C.F.R. Part 241 section 19-7(d)(1), provides for disclosure of international O&D Survey data to air carriers directly participating in and contributing to the O&D Survey. While we have found it appropriate to direct Finnair to provide certain limited Origin-Destination data to the O&D Survey, Finnair is not an air carrier within the meaning of Part 241. The regulation (14 C.F.R. Part 241, Section 03) defines an air carrier as "[a]ny citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation." Finnair accordingly will have no access to the data filed by U.S. air carriers. Moreover, we will keep Finnair's submissions confidential while maintaining the current restriction on access to U.S. air carrier Origin-Destination data by foreign air carriers.

IX. Computer Reservations System (CRS) Issues

Another competitive issue concerns ownership interests that the Joint Applicants may have in competing CRSs. We note that the Joint Applicants recognize that immunity will not extend to their management of any interest they may have in individual CRSs.[35]

X. Operation under a Common Name/Consumer Issues

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33 *See, e.g.*, Order 2002-1-6 at 7, Docket OST-2001-10429 (Delta-Air France-Alitalia-CSA request for antitrust immunity).

34 Consistent with our determinations in Orders 96-7-21, 96-11-1, and 99-9-9 we intend to request other foreign airline partners of immunized international alliances to submit O&D Survey data and condition any further grants of antitrust immunity on provision of such data. We will treat the foreign airlines' O&D data as confidential, will not allow U.S. airlines any access to the data, and will not allow foreign airlines any access to U.S. airline O&D Survey data. We will use these data only for internal analytical purposes.

35 Application at 22.

Since operation of the Alliance Agreement could raise important consumer issues and "holding out" questions, if the Joint Applicants choose to operate under a common name or use "common brands," they will have to seek separate approval from the Department prior to such operations. For example, it is Department policy to consider the use of a single air carrier designator code by two or more airlines to be unfair and deceptive and in violation of the Act unless the airlines give reasonable and timely notice to passengers of the actual operator of the aircraft.[36]

XI. Summary

We grant approval and antitrust immunity to the Alliance Agreement, as described in this order. We also direct the Joint Applicants to resubmit the Alliance Agreement for review before five years from the date of issuance of this order. However, the Department is not authorizing the Joint Applicants to operate under a common name. If they decide to operate under a common name, they will have to comply with our relevant procedures before implementing the change.

We also direct the Joint Applicants to withdraw from participation in any International Air Transport Association (IATA) tariff conference activities relating to through fares, rates or charges applicable between the United States and Finland, and/or between the United States and any other countries whose designated airlines participate in similar agreements with U.S. airlines that have been or are subsequently granted antitrust immunity by the Department; and file all subsidiary and/or subsequent agreement(s) with the Department for prior approval. We also direct Finnair to report full-itinerary O&D Survey data for all passenger itineraries that contain a United States point (similar to the O&D Survey data already reported by American).

ACCORDINGLY:

1. We approve and grant antitrust immunity to the Alliance Agreement between and among American Airlines, Inc. and Finnair Oyj, and their wholly-owned affiliates, in so far as the Alliance Agreement relate to foreign air transportation;[37] and subject to the provisions that the antitrust immunity will not cover any activities of the Joint Applicants as owners or marketers of computer reservation systems businesses;

2. We direct American Airlines, Inc. and Finnair Oyj, and their wholly-owned affiliates, to resubmit their Alliance Agreement before five years from the date of issuance of this order;

3. We condition our grant of approval and immunity to require American Airlines, Inc. and Finnair Oyj, and their wholly-owned affiliates, to withdraw from participation in any International Air Transport Association tariff conference activities that discuss any proposed

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36 *See* 14 C.F.R. Part 257.

37 The immunity that we grant here would apply solely with respect to transactions between and among the Joint Applicants and their wholly-owned affiliates. The immunity would not extend to code-share operations or other coordinated activities involved in such transactions to the extent applying to airlines other than the Joint Applicants and their wholly-owned affiliates.

through fares, rates or charges applicable between the United States and Finland, and/or between the United States and any other countries whose designated airlines participate in similar transactions with U.S. airlines or are subsequently granted antitrust immunity by the Department;

4. We direct Finnair Oyj to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic for all passenger itineraries that include a United States point (similar to the O&D Survey data already reported by its alliance partner American Airlines, Inc.). The full itinerary record is defined as the passenger's complete itinerary from origin to destination as opposed to the abbreviated gateway record reported under T100(f);

5. We direct American Airlines, Inc. and Finnair Oyj, and their wholly-owned affiliates, to submit any subsequent subsidiary agreements implementing the Alliance Agreement for prior approval;[38]

6. We direct American Airlines, Inc. and Finnair Oyj, and their wholly-owned affiliates, to obtain prior approval from the Department if they choose to operate or hold out service under a common name or use common brands;

7. We delegate to the Director, Office of International Aviation, the authority to determine the applicability of the directive set forth in ordering paragraph 3 to specific prices, markets, and tariff coordination activities, consistent with the scope and purpose of the condition as previously described;

8. This order is effective immediately;

9. We may amend, modify, or revoke this authority at any time without hearing; and

10. We shall serve this order on all persons on the service list in this docket.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

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[38] Regarding this requirement, we do not expect the Joint Applicants to provide the Department with minor technical understandings that are necessary to implement fully their day-to-day operations but that have no additional substantive significance. We do, however, expect and direct them to provide the Department with all contractual instruments that may materially alter, modify, or amend the Alliance Agreement. Any appropriate documents shall be submitted to the Director, Office of Aviation Analysis, Room 6401.